

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 14 1998

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86-285

OFFICE OF
MANAGING DIRECTOR

Todd M. Stansbury, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Re: Request for Determination
FY 1998 Regulatory Fee
TEMPO Satellite, Inc.

Dear Mr. Stansbury:

This is in response to your request for a determination that TEMPO Satellite, Inc. (TEMPO) is not subject to the Fiscal Year (FY) 1998 regulatory fee for Direct Broadcast Satellite (DBS) space stations.

Although TEMPO placed a DBS into orbit in March 1997, it has not commenced commercial service using the satellite. Under the terms of its authorization, TEMPO was required to place its satellite "in operation" by May 1, 1998. The International Bureau, in TEMPO Satellite, Inc., DA 98-253 (April 30, 1998), ruled that because TEMPO had not initiated commercial service, the satellite was not operational. The International Bureau granted TEMPO an extension of the time in which to place its satellite in operation. Thus, TEMPO is not operational and it is exempt from the FY 1998 DBS regulatory fees. TEMPO will be exempt from the regulatory fees until its satellite becomes operational.

If you have any question concerning the exemption, please call the Chief, Fee Section, at (202) 418-1995.

Sincerely,


Mark Reger
Chief Financial Officer

000000 BCB-98-082

WILEY, REIN & FIELDING

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WRITER'S DIRECT DIAL NUMBER

September 2, 1998

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Andrew Fishel
Managing Director
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: TEMPO Satellite, Inc.
1998 Regulatory Fees
Request for Determination

Dear Mr. Fishel:

TEMPO Satellite, Inc. ("TEMPO"), by its attorneys, requests confirmation that it is not subject to the payment of regulatory fees assessed for operational direct broadcast satellite ("DBS") space stations for fiscal year 1998, pursuant to The Omnibus Budget Reconciliation Act of 1993, 47 U.S.C. § 159(a). *See Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, FCC 98-36 (rel. June 16, 1998) ("1998 Fee Order").

TEMPO holds an authorization to launch and operate a DBS satellite at the nominal 119° W.L. orbital slot. *TEMPO Satellite, Inc.*, DA 97-355 (Int'l Bur. Feb. 24, 1997). Pursuant to that authority, TEMPO launched a satellite in March 1997 and placed it in orbit. TEMPO has not, however, commenced a commercial service using the satellite.

According to the *1998 Fee Order*, entities authorized to operate geostationary space stations (including direct broadcast satellites) are assessed a regulatory fee of \$119,000 per "operational satellite in orbit." *1998 Fee Order*, Attachment H at ¶ 36. Satellite operators that received licenses on or before October 1, 1997 are subject to fees. As further explained in the International Bureau's Public Notice detailing payment procedures for satellite services, a fixed geostationary satellite is considered operational "upon certification of operation of a single satellite pursuant to section 25.121(d)" of the Commission's Rules. *See Public Notice, FY 1998 International and Satellite Services Regulatory Fees*, Rep. No. 84741 (Aug. 3, 1998) at 3 ("I.B. Public Notice"). That regulation specifies that the license term of a fixed satellite service space station begins on the date

that a licensee certifies to the Commission that the satellite has been successfully placed into orbit and is operating pursuant to the terms of its authorization. 47 C.F.R. § 25.121(d)(1).

However, neither the *I.B. Public Notice* nor the FCC's Rules in Part 100, which govern the DBS service, details the standard for determining when a DBS satellite is deemed to be operational or specifies the commencement date for a DBS license. In contrast to operators of fixed satellite services, DBS providers are not expressly required by the Commission's Rules to file a certification upon launch and operation of a satellite. Rather, Section 100.19 requires only that DBS satellites be placed "in operation" within six years of the construction permit grant, without defining what constitutes operational status of a DBS space station.

Pursuant to Section 100.19, TEMPO was required to place its satellite "in operation" by May 1, 1998. Thus, on April 3, 1998, TEMPO submitted an application requesting that the Commission confirm that TEMPO's in-orbit space station at 119 W.L. was in operation for purposes of Section 100.19 or, in the alternative, grant an extension of time for TEMPO to meet its operational milestone. *See Application for Extension of Time to Complete the Construction and Operation of a Direct Broadcast Satellite*, File No. 94-SAT-EXT-98 (filed April 3, 1998) ("*Extension Application*"). In support of the claim that it was "in operation," on April 16, 1998, TEMPO submitted a certification verifying that its satellite had been launched on March 8, 1997, conformed to its authorization, and was "fully capable" of providing service. *Response of TEMPO Satellite, Inc., FCC File No. 94-SAT-EXT-98 (April 16, 1998)*.

The International Bureau, however, did not agree with TEMPO's claim of operational status. *TEMPO Satellite, Inc.*, DA 98-823 (April 30, 1998) ("*Extension Order*"). In particular, the Bureau held that "the term 'in operation' does not mean merely having launched a satellite; it means providing service to the public." *Id.* at ¶ 9. Because TEMPO had not yet initiated a commercial service, its satellite was determined by the Bureau to be not operational.¹

Consistent with the Bureau's determination that TEMPO's satellite is not yet "in operation", TEMPO also should not be deemed to be "operational" for purposes of assessing regulatory fees. Moreover, TEMPO should not be subject to fees even if its status were based upon the standard applied to fixed satellite services. According to the *I.B. Public Notice* (at 3 n.3), fees must be paid

¹ The Bureau, however, extended TEMPO's DBS authorization to allow additional time to meet its obligations under Section 100.19. *Extension Order* at ¶ 20.

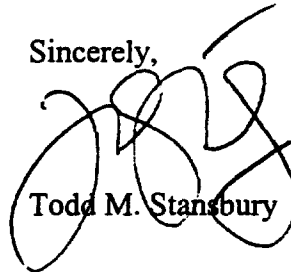
Andrew Fishel
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by fixed satellite licensees that certified the completion of construction pursuant to Section 25.121(d) by October 1, 1997. The certification filed by TEMPO in support of its *Extension Application*, which detailed the status of its satellite, was not submitted until April 16, 1998.

In sum, in light of the Bureau's holding in the *Extension Order*, TEMPO should not be subject to fees for FY 1998. To eliminate any uncertainty regarding its regulatory status (and the potential for financial penalties), TEMPO respectfully requests confirmation, in advance of the upcoming window for the submission of regulatory fees, that its satellite will not be considered operational for purposes of the *1998 Fee Order*.

...Please contact this office if there are any questions.

Sincerely,



Todd M. Stansbury

cc: Kathleen Campbell, FCC
Terry D. Johnson, FCC
Jerome D. Remson, FCC